



Staff Report

Agenda Item: **A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA, AMENDING ARTICLE 10-1-5 "EXPLOSIVES", AND CREATING ARTICLE 10-4 "FIREWORKS REGULATIONS", OF THE CLARKDALE TOWN CODE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, AND PROVIDING FOR SEVERABILITY"** - Discussion and consideration of Resolution # 1355, a Resolution declaring the above named Ordinance which establishes fireworks regulations in the Town of Clarkdale a public record to be adopted by Ordinance #330.

Sponsored By: Mayor Von Gausig

Prepared By: Gayle Mabery, Town Manager

Meeting Date: October 26, 2010

Background: On September 28, 2010, the Clarkdale Town Council held a worksession to discuss whether or not to enact regulations on the use of fireworks in light of HB2246, which was enacted during the Second Regular Session of the 49th Arizona Legislature 2010 and authorized the sale of certain kinds of consumer and display fireworks in the state. The legislation includes provisions allowing cities and towns flexibility to regulate the use of fireworks within their municipal boundaries. The bill is effective December 1, 2010.

As a result of the discussion at the Council's 9/28/10 worksession, staff has modified the model ordinance that was prepared by the League of Arizona Cities and Towns and is presenting it for Council consideration. The fireworks provisions would be included as Article 10-4 of the Clarkdale Town Code, under the "Offenses" section of the Code. Provisions included in the ordinance include:

- An amendment to Section 10-1-5, which regulates explosives. The amendment deletes the reference to fireworks in this section of the code so that all fireworks references are contained in Article 10-4.
- Creates a new Article 10-4 – Fireworks Regulations
- Includes definitions from the Arizona Revised Statutes for *Consumer Firework, Display Firework, Fireworks, Novelty Items, Permissible Consumer Fireworks and Supervised Public Display*.

- Prohibits the use of fireworks within the Town of Clarkdale, but allows for use of novelty items (which are defined as “federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers and certain toys as defined in A.R.S. 36-1601) and supervised public displays (with a permit from the Fire Marshall).
- Provides for the sale of fireworks in Clarkdale, but requires that every person engaged in a sale must prominently display signs at each cash register and in each area where fireworks are displayed for sale stating, 1) That the use of fireworks, except novelty items, including permissible consumer fireworks, is prohibited in the Town of Clarkdale; and 2) Consumer fireworks may not be sold to persons under the age of 16.
- Directs the Community Development Director to develop regulations concerning the size and color of the required signs and develop a model sign that will be available at the Town Clerk’s office and on the Town’s website.
- Makes a person who discharges fireworks and causes the need for an emergency response liable for the expenses incurred as a result of the response.
- Makes it a Class 2 Misdemeanor to discharge fireworks in Clarkdale (which may be punishable by a fine in an amount up to \$750, or imprisonment for a period up to four months).
- Makes it a Class 1 Misdemeanor to put on a public display of fireworks without the appropriate permits from the Fire Marshall (which may be punishable by a fine in an amount up to \$2,500, or imprisonment for a period up to six months).
- Makes a violation of the signage requirements a Class 2 (which may be punishable by a fine in an amount up to \$750, or imprisonment for a period up to four months).

The Council had not previously discussed appropriate penalties for violations of the fireworks regulations. Penalties can range from Misdemeanor Criminal penalties to Civil penalties. If the Council would like to consider changing the penalties that are currently drafted in the Code, you can use the following as a guide:

Possible Criminal Penalties:

- Class 1 Misdemeanor: punishable by a maximum fine of \$2,500.00 plus applicable surcharges, imprisonment for up to six months, and probation for up to three years.
- Class 2 Misdemeanor: punishable by a maximum fine of \$750.00 plus applicable surcharges, imprisonment for up to four months, and probation for up to two years.
- Class 3 Misdemeanor: punishable by a maximum fine of \$500.00 plus applicable surcharges, imprisonment for up to 30 days, and probation up to one year.

A minimum fine may also be set for any amount less than the maximum fine. This would set the lowest limit of fine that a judge could impose for violation.

Possible Civil Penalties:

- Civil Offense: punishable by a fine, but no possibility of imprisonment. A maximum fine reasonably related to the offense should be set. Again, a minimum fine may also be set, which would set the lowest limit of a fine that a judge could imposed for a violation.

For instance, the City of Tempe’s proposed Fireworks Regulations makes any violation of the regulations on posting of signage a Civil Offense, punishable by a minimum fine of \$250, and any violations of the illegal use of fireworks is a Class 3 Misdemeanor with a minimum fine of \$250.

The City of Sedona made any violations of any provision of their fireworks regulations (either for illegal use of fireworks or not following the signage requirements) a Class 1 Misdemeanor (which may be punishable by a fine in an amount up to \$2,500, or imprisonment for a period up to six months).

Because the new State regulations involving the sale of fireworks go into effect on December 1, 2010, the Council needs to take action on an ordinance regulating fireworks before November 1, 2010 if they want Clarkdale's regulations to be in place before sales of fireworks begin in the state (this is because there is a 30-day period before an ordinance becomes effective).

To save the cost of publishing in the newspaper a lengthy ordinance, this change is being first made a public record by resolution (this agenda item) and then is adopted by reference by an ordinance.

Recommendation: Staff recommends that the Council adopt Resolution #1355, a Resolution of the Mayor and Council of the Town of Clarkdale, Arizona, declaring as a public record that certain document filed with the Town Clerk and entitled "An Ordinance of the Mayor and Council of the Town of Clarkdale, Yavapai County, Arizona, Amending Article 10-1-5 "Explosives", and Creating Article 10-4 "Fireworks Regulations", of the Clarkdale Town Code; Providing for Repeal of Conflicting Ordinances, and Providing for Severability.

RESOLUTION NO. 1355

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA, AMENDING ARTICLE 10-1-5 "EXPLOSIVES", AND CREATING ARTICLE 10-4 "FIREWORKS REGULATIONS", OF THE CLARKDALE TOWN CODE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, AND PROVIDING FOR SEVERABILITY".

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA:

That certain document entitled "AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA, AMENDING ARTICLE 10-1-5 "EXPLOSIVES", AND CREATING ARTICLE 10-4 "FIREWORKS REGULATIONS", OF THE CLARKDALE TOWN CODE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, AND PROVIDING FOR SEVERABILITY", as set forth in Exhibit A and incorporated herein, to be adopted by Ordinance #330, constitutes a public record to be adopted by reference pursuant to ARS 9-802.

At least three (3) copies of this public record shall be filed in the office of the City Clerk and kept available for public use and inspection.

PASSED AND ADOPTED by the Mayor and Council of the Town of Clarkdale, Arizona, this 26th day of October, 2010.

ATTEST:

Doug Von Gausig, Mayor

Kathy Bainbridge, Town Clerk

APPROVED AS TO FORM:

Robert Pecharich, Town Attorney

Exhibit A to Resolution 1355

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA, AMENDING ARTICLE 10-1-5 "EXPLOSIVES", AND CREATING ARTICLE 10-4 "FIREWORKS REGULATIONS", OF THE CLARKDALE TOWN CODE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, AND PROVIDING FOR SEVERABILITY

Section 1. Article 10-1-5 "Explosives" of the Town Code is hereby amended as follows:

Article 10-1-5 Explosives

It is unlawful for any person within the limits of the Town to blast or use powder, ~~fireworks~~ or other explosives, without a permit from the Chief of Police in writing.

Section 2. Article 10-4 "Fireworks Regulations" of the Town Code is hereby added:

ARTICLE 10-4 Fireworks Regulations

- 10-4-1 Definitions**
- 10-4-2 Fireworks Prohibited; exceptions**
- 10-4-3 Sale of Fireworks**
- 10-4-4 Posting of Signs by Persons Engaged in the Sale of Fireworks; penalty.**
- 10-4-5 Authority to Enforce Violations of this Article; Means of Enforcement**
- 10-4-6 Liability for Emergency Responses Related to Use of Fireworks; Definitions**
- 10-4-7 Penalty**

Section 10-4-1 Definitions

(A) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Consumer firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.
- (2) *Display firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.
- (3) *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of

producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601.

- (4) *Novelty items* means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statute 36-1601.
- (5) *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the Town of Clarkdale even where the use of those items has been prohibited.
- (6) *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the Fire Marshall or his designee.

Section 10-4-2 Fireworks prohibited; exceptions.

(A) The use, discharge or ignition of fireworks within the Town of Clarkdale is prohibited.

(B) Nothing in this section or article shall be construed to prohibit the use, discharge or ignition of novelty items or the occurrence of a supervised public display of fireworks.

(C) Permits may be granted by the Fire Marshall or designee for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked, during time periods of High Fire Danger warnings. The Fire Marshall has authority to impose conditions on any permits granted.

(D) Failure to comply with subpart A of this section is a Class 2 Misdemeanor offense and may be punishable by a fine in an amount up to \$750.00 plus applicable surcharges, imprisonment for a period up to four months, and probation for a period up to two years.

(E) Failure to comply with any permit requirements issued by the Fire Marshal, as identified in Subpart C, is a Class 1 Misdemeanor offense and may be punishable by a fine in an amount up to \$2,500.00 plus applicable surcharges, imprisonment for a period up to six months, and probation for up to three years.

Section 10-4-3 Sale of Fireworks.

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen (16) years of age.

(B) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law or the Clarkdale Town Code.

Section 10-4-4 Posting of signs by persons engaged in the sale of fireworks; civil penalty.

(A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

- (1) The use of fireworks, except novelty items as defined by the Clarkdale Town Code, including permissible consumer fireworks, is prohibited.
- (2) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

(B) Signs required under this section shall be placed at each cash register and in each area where fireworks are displayed for sale.

(C) The Community Development Director or designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be posted on the Town's website and filed with the Town Clerk's office.

(D) Failure to comply with subparts A and B of this section is a Class 2 Misdemeanor offense and may be punishable by a fine in an amount up to \$750.00 plus applicable surcharges, imprisonment for a period up to four months, and probation for a period up to two years.

Section 10-4-5 Authority to enforce violations of this article; means of enforcement.

(A) A Town police officer or the Town Attorney may issue complaints to enforce violations of this article.

Section 10-4-6 Liability for emergency responses related to use of fireworks; definitions.

(A) A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything that is designed or intended to rise into the

air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response that is required by such use, discharge or ignition. The fact that a person is convicted or found responsible for a violation(s) of this article is prima facie evidence of liability under this section.

(B) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subpart A of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

(C) For the purposes of this section:

- (1) "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.
- (2) "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

Section 10-4-7 Penalty.

- (A) Unless another penalty is specifically provided for, the penalty for violating any prohibition or requirement imposed by this article is a Class 2 Misdemeanor and may be punishable by a fine in an amount up to \$750.00 plus applicable surcharges, imprisonment for a period up to four months, and probation for a period up to two years.